

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2216.05
COMPLAINT INVESTIGATOR:	Joe Bear
DATE OF COMPLAINT:	February 14, 2005
DATE OF REPORT:	March 16, 2005
REQUEST FOR RECONSIDERATION:	yes/April 12, 2005 - not revised
DATE OF CLOSURE:	May 10, 2005

COMPLAINT ISSUES:

Whether the Clark-Pleasant Community School Corporation and Johnson County Special Services violated:

511 IAC 7-21-7 by failing to provide transportation for the student.

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically by failing to provide speech/language services as required.

511 IAC 7-21-2(a) by failing to ensure that all members of personnel employed or contracted by the public agency to provide or supervise the provision of special education or related services are appropriately licensed or certified.

511 IAC 7-27-7(d) by continuing to implement an IEP for a period of more than 12 months.

During the course of the investigation these additional issues were identified:

511 IAC 7-27-2(a) for failing to ensure that the required case conference committee (CCC) meeting was scheduled at a mutually agreed date, time, and place.

511 IAC 7-27-3(h) for holding a case conference committee meeting without the parent in attendance and without the parent choosing not to participate.

FINDINGS OF FACT:

1. The Student has been identified as having a learning disability and communication disorder, and has been determined eligible for special education and related services.
2. The IEP does not specify special transportation, but the Student is eligible for regular transportation services. The Complainant alleges that a school bus does not stop at the intersection that was indicated on a postcard she received at the beginning of the school year, and that the Student has been denied transportation services. The School provided a form with transportation information for the Student, which says that the Student is to be riding Bus #24 for trips to and from school. Although transportation was offered, the Student has never ridden the bus to school.
3. The postcard the Complainant received mentioned the addition of a bus stop at a new intersection. The bus now stops at this and the previous location (with the farther stop being about one-tenth of a

mile from the Student's house). The arrival time of the school bus may have changed slightly since the Complainant was first informed of the time, due to the addition of new stops and students.

4. The Student's transportation record had not changed since August 18, 2004, until the time the complaint was filed. The transportation department does not have a record of having been contacted regarding the Complainant's concerns.
5. The Student's IEP dated February 13, 2004, originally called for two 20-minute periods of speech therapy per week. On September 14, 2004, the Student's CCC met with the Complainant to discuss the results of an assistive technology evaluation. The decision was made to change the IEP so that the Student would come for speech therapy once per week for a period of 40 minutes.
6. The Student is scheduled for speech therapy on Fridays from 10:35 a.m. until 11:15 a.m.
7. The Student received speech therapy services 13 times out of a possible 18 times. The other five times were: Student absences (2), therapist absences (1), a class activity, and a field trip. Progress reports showing the Student's progress for the first and second grading periods of the school year were shared with the Complainant.
8. On Wednesday, February 2, 2005, the Student's special education teacher had to go to the hospital for an emergency medical problem. The teacher asked her instructional assistant to fill in for her while she was away, for a period of 20 minutes in the resource room per day. The instructional assistant filled in for four days, with the teacher returning on Tuesday, February 8, 2005.
9. The instructional assistant is not a licensed special education teacher or a certified substitute teacher. According to the School, the instructional assistant carried out the teacher's lesson plans with "indirect supervision" from the Student's general classroom teacher. The special education teacher received information from another teacher while in the hospital on how the instructional assistant was doing.
10. The Student's IEP indicated that special education services would continue until February 17, 2005. The teacher of record (TOR) made telephone contact with the Complainant on February 9, 2005, regarding the need to schedule a CCC meeting to develop a new IEP. Due to car trouble, the Complainant was unable to get to a meeting. The TOR said that they could wait until the Complainant's car was fixed, or the TOR could pick up the Complainant in her own car. The Complainant elected to wait until the car was fixed. The TOR sent the Student's agenda home with a note to contact the School as soon as the car was fixed so that a CCC meeting could be arranged.
11. A Notice of Case Conference was sent to the Complainant in the mail on Friday, February 11, 2005. A CCC meeting was set by the School for Tuesday, February 15, 2005, at 9:30 a.m. The Complainant had been without phone service from February 11 – 15, so she missed an e-mail sent by the principal notifying her of the meeting.
12. A CCC member drove to the Complainant's house on the morning of February 15, 2005, to try to get her to participate in the CCC meeting taking place that morning. The Complainant was not available. The CCC participants met without the parent, out of concern for not allowing the IEP to be implemented for more than 12 months.
13. The CCC reconvened on March 7, 2005, this time with the parent in attendance. The IEP developed on February 15 was agreed to.

CONCLUSIONS:

1. Findings of Fact #2, #3, and #4 indicate that bus service has been available to the Student throughout the school year. Therefore, a violation of 511 IAC 7-21-7 is not found.
2. Findings of Fact #5 and #6 indicate that speech therapy services were scheduled in accordance with the Student's changed IEP. Finding of Fact #7 indicates that the Student received the services 13 out of 18 times, with two of the missed times due to absences of the Student. Therefore, a violation of 511 IAC 7-27-7(a) is not found.
3. Findings of Fact #8 and #9 indicate that the instructional assistant who took over the class was not properly licensed or certified, and was not receiving direct supervision. Therefore, a violation of 511 IAC 7-21-2(a) is found.
4. Findings of Fact #10 and #12 indicate that the School implemented the Student's IEP for more than 12 months. The IEP developed on February 15, 2005, was not a valid IEP, since sufficient notice and lead time were not given to the parent to encourage her participation. The previous IEP was, therefore, in effect until the whole CCC, including the parent, met and agreed to an IEP on March 7, 2005. Therefore, a violation of 511 IAC 7-27-7(d) is found.
5. Findings of Fact #11 and #12 indicate that the School did not take steps to schedule the CCC meeting at a mutually agreed date, time, and place. Therefore, a violation of 511 IAC 7-27-2(a) is found.
6. Finding of Fact #12 indicates that a CCC meeting was held on February 15, 2005, without the parent in attendance, due to lack of notification. The CCC could have met as late as February 17, 2005. Finding of Fact #13 indicates that the parent participated in the meeting on March 7, 2005. Therefore, a violation of 511 IAC 7-27-3(h) is found, but corrective action has been taken.

The Department of Education, Division of Exceptional Learners, requires corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Clark-Pleasant Community School Corporation and Johnson County Special Services shall:

1. Send a written memorandum to all special education personnel, indicating that all personnel who provide instruction must be properly licensed or certified, and that instructional assistants must work under the direct supervision of a properly licensed or certified special education teacher.

Documentation of compliance (consisting of a copy of the memorandum and a list of those receiving it) shall be submitted to the Division by April 15, 2005.

2. Send an assurance statement to the Division that describes a plan to schedule CCC meetings at a mutually agreed time, date, and place. The assurance statement should discuss the need to document attempts to notify parents by telephone, written correspondence, and personal visits, with sufficient notice and lead time given to the parents.

Documentation of compliance (consisting of the assurance statement) shall be submitted to the Division by April 15, 2005.